Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Joint Application by SBC Communications Inc., Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, the Ohio Bell Telephone Company, Wisconsin Bell, Inc., and Southwestern Bell Communications Services, Inc. for Authorization To Provide In-Region, InterLATA Services in Illinois, Indiana, Ohio, and Wisconsin	)	WC Docket No. 03 - 167

MEMORANDUM OPINION AND ORDER

Adopted: October 14, 2003 **Released: October 15, 2003**

By the Commission: Commissioners Copps, Martin and Adelstein issuing separate statements.

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I. INTRODUCTION

1. On July 17, 2003, SBC Communications Inc., and its subsidiaries, Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, the Ohio Bell Telephone Company, Wisconsin Bell, Inc., and Southwestern Bell Communications Services, Inc. (collectively, SBC or applicant) jointly filed this multi-state application pursuant to section 271 of the Communications Act of 1934, as amended,[1] for authority to provide in-region, interLATA services originating in the states of Illinois, Indiana, Ohio, and Wisconsin.[2] We grant SBC's application in this Order based on our conclusion that SBC has taken the statutorily required

[1] We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996 and other statutes, as the Communications Act or the Act. *See* 47 U.S.C. §§ 151 *et seq.* We refer to the Telecommunications Act of 1996 as the 1996 Act. *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[2] *See Application of SBC, Pursuant to Section 271 of the Telecommunications Act of 1996 for Authorization To Provide In-Region, InterLATA Services in Illinois, Indiana, Ohio, and Wisconsin,*, WC Docket No. 03-167 (filed July 17, 2003) (SBC Application).

steps to open its local exchange markets in these states to competition.

2. We note that the outstanding work of the state commissions in conjunction with SBC's extensive efforts to open its local exchange markets has resulted in competitive entry in each of these states. As of May 2003, SBC estimates competitive local exchange carriers (LECs) were serving at least 2.3 million access lines in Illinois, or 29% of all access lines in Illinois;[3] at least 393,000 access lines in Indiana, or 15% of all access lines in Indiana;[4] at least 885,000 access lines in Ohio, or 20% of all access lines in Ohio;[5] and at least 633,000 access lines in Wisconsin, or 25% of all access lines in Wisconsin.[6] These figures include approximately 319,000 UNE loops and 779,000 UNE-platform lines in Illinois,[7] 53,000 UNE loops and 157,000 UNE platform lines in Indiana,[8] 125,000 UNE loops and 547,000 UNE-platform lines in Ohio,[9] and 229,000 UNE loops and 146,000 UNE-platform lines in Wisconsin.[10]

3. We wish to acknowledge the Illinois Commerce Commission (Illinois Commission), the Indiana Utility Regulatory Commission (Indiana Commission), the Public Utility Commission of Ohio (Ohio Commission), and the Public Service Commission of Wisconsin (Wisconsin Commission) for their considerable effort and dedication in overseeing SBC's implementation of the requirements of section 271 of the Act. By diligently and actively conducting proceedings to set UNE prices, to implement performance measures, to develop Performance Remedy Plans (PRPs), and to evaluate SBC's compliance with section 271, these state commissions laid the necessary foundation for our review of this application.

II. BACKGROUND

4. In the 1996 amendments to the Communications Act, Congress required that the Bell Operating Companies (BOCs) demonstrate compliance with certain market-opening requirements contained in section 271 of the Act before providing in-region, interLATA long

[3] SBC Application App. A, Vol. 9, Tab 24, Affidavit of Deborah O. Heritage Regarding Illinois (SBC Heritage Illinois Aff.) at para. 4.

[4] SBC Application App. A, Vol. 9, Tab 25, Affidavit of Deborah O. Heritage Regarding Indiana (SBC Heritage Indiana Aff.) at para. 4.

[5] SBC Application App. A, Vol. 9, Tab 26, Affidavit of Deborah O. Heritage Regarding Ohio (SBC Heritage Ohio Aff.) at para. 4.

[6] SBC Application App. A, Vol. 9, Tab 27, Affidavit of Deborah O. Heritage Regarding Wisconsin (SBC Heritage Wisconsin Aff.) at para. 4.

[7] SBC Heritage Illinois Aff. at para. 6.

[8] SBC Heritage Indiana Aff. at para. 6.

[9] SBC Heritage Ohio Aff. at para. 6.

[10] SBC Heritage Wisconsin Aff. at para. 6.

distance service.[11] Congress provided for Commission review of BOC applications to provide such service in consultation with the relevant state commissions and the U.S. Attorney General.[12] In our examination of this application, we rely heavily on the work completed by the state commissions. We summarize the individual state proceedings below.

5. *Illinois.* On October 24, 2001, the Illinois Commission issued an order initiating a proceeding to investigate the status of SBC's compliance with section 271 of the Act, to hold hearings, and to develop a comprehensive factual record for purposes of its anticipated consultation with this Commission.[13] The Illinois Commission conducted a number of workshops open to all participants that identified and refined relevant issues including those related to Track A, the 14-point checklist, and the public interest.[14] On May 13, 2003, the Illinois Commission issued a final order finding that SBC's application was in the public interest and that SBC met the 14-point checklist and the Track A requirements in Illinois.[15]

6. *Indiana.* On February 2, 2000, SBC formally requested that the Indiana Commission commence a process to review its application to provide long distance services in Indiana.[16] SBC requested that the Indiana Commission review checklist compliance separate from overseeing the testing of the operational support system (OSS) and performance measures.

[11] *See* 47 U.S.C. § 271.

[12] 47 U.S.C. §§ 271(d)(2)(A), (B). The Commission has summarized the relevant statutory framework in prior orders. *See, e.g., Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001) (*Sprint v. FCC*); *Application by SBC Communications Inc., Southwestern Bell Tel. Co. and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18359-61, paras. 8-11 (2000) (*SWBT Texas Order*).

[13] *Illinois Commerce Commission On its Own Motion, Investigation Concerning Illinois Bell Telephone Company's Compliance with Section 271of the Telecommunications Act of 1996*, ICC Docket No. 01-0662, Order Initiating Investigation (Illinois Commission October 24, 2001) (*Illinois Section 271 Proceeding Initiating Order*).

[14] SBC Application at 3-6; SBC Application App. A, Vol. 11, Tab 29, Affidavit of Rhonda J. Johnson (SBC Johnson Aff.) at paras. 12-23. As we discuss below, we find that SBC has satisfied the requirements of Track A. *See* para. 13, *infra*.

[15] *Illinois Commerce Commission On its Own Motion, Investigation Concerning Illinois Bell Telephone Company's Compliance with Section 271of the Telecommunications Act of 1996*, ICC Docket No. 01-0662, Order on Investigation (Illinois Commission May 13, 2003) (*Illinois Section 271 Order*).

[16] *Petition of Indiana Bell Telephone Company, Incorporated, D/B/A Ameritech Indiana or SBC Indiana Pursuant to I.C. 8-1-2-61 for a Three Phase Process for Commission Review of Various Submissions of SBC Indiana to Show Compliance with Section 271(c) of the Telecommunications Act of 1996*, Cause No. 41657, Petition (filed with Indiana Commission February 2, 2000) (*SBC Indiana Petition*).

On March 19, 2001, the Indiana Commission issued an order authorizing the OSS test.[17] The Indiana Commission ensured the process was open to participation by all interested parties and held numerous and lengthy workshops between SBC and the competitive LECs to discuss, among other things, OSS enhancements, performance measures, and checklist items.[18] On July 2, 2003, the Indiana Commission issued an order indicating that it would support SBC's application, subject to the filing of compliance plans developed in Michigan and subsequently filed in Illinois.[19] On August 6, 2003, the Indiana Commission filed comments in this proceeding, which concluded that SBC is largely in compliance with the section 271 requirements. The Indiana Commission did, however, defer to this Commission the ultimate determination of whether local markets have been fully and irreversibly open to competition, and whether SBC has demonstrated sufficient accuracy of its systems data and wholesale billing reliability.[20]

7. *Ohio.* On June 1, 2000, the Ohio Commission initiated a proceeding to review SBC's section 271 application for Ohio.[21] The Ohio Commission held numerous and detailed collaborative workshops between SBC and the competitive LECs focused on OSS enhancements, development and supervision of OSS tests, performance measurements, and checklist items including UNE combinations.[22] On June 26, 2003, the Ohio Commission issued an order concluding that SBC has opened the local markets in Ohio to competition and has satisfied all the requirements for section 271 approval.[23]

8. *Wisconsin.* On September 14, 2001, the Wisconsin Commission issued a notice

[17] *Petition of Indiana Bell Telephone Company, Incorporated, D/B/A Ameritech Indiana or SBC Indiana Pursuant to I.C. 8-1-2-61 for a Three Phase Process for Commission Review of Various Submissions of SBC Indiana to Show Compliance with Section 271(c) of the Telecommunications Act of 1996*, Cause No. 41657, Order (Indiana Commission March 19, 2001) (*Indiana OSS Order*).

[18] SBC Application at 6-7; SBC Application App. A, Vol. 1, Tab 8, Affidavit of Jolynn B. Butler (SBC Butler Aff.) at paras. 9-24.

[19] *Petition of Indiana Bell Telephone Company, Incorporated, D/B/A Ameritech Indiana or SBC Indiana Pursuant to I.C. 8-1-2-61 for a Three Phase Process for Commission Review of Various Submissions of SBC Indiana to Show Compliance with Section 271(c) of the Telecommunications Act of 1996*, Cause No. 41657, Compliance Order (Indiana Commission July 2, 2003) (*Indiana Compliance Order*).

[20] Indiana Commission Comments at 1-2.

[21] *Investigation into SBC Ohio's Entry into In-Region InterLATA Service Under Section 271 of the Telecommunication Act of 1996*, Case No. 00-942-TP-COL, Order (Ohio Commission June 1, 2000).

[22] SBC Application at 7-11; SBC Application App. A, Vol. 11, Tab 32, Affidavit of Daniel R. McKenzie (SBC McKenzie Aff.) at paras. 9-20.

[23] *Investigation into SBC Ohio's Entry into In-Region InterLATA Service Under Section 271 of the Telecommunication Act of 1996*, Case No. 00-942-TP-COL, Order (Ohio Commission June 26, 2003) (*Ohio Commission 271 Order*).

opening the section 271 docket in Wisconsin.[24] Interested parties conducted technical hearings and participated in a number of collaborative workshops to resolve some of the outstanding issues.[25] The Wisconsin Commission issued two separate orders. On July 1, 2003, it issued a "Phase I" order concluding that SBC had satisfied Track A and each of the fourteen checklist items in Wisconsin subject to its determinations in its "Phase II" proceeding.[26] On July 7, 2003, it issued a "Phase II" order concluding that SBC provides nondiscriminatory access to OSS in Wisconsin and that it provides unbundled network elements (UNEs) at TELRIC-based rates in Wisconsin.[27]

9. On July 17, 2003, SBC filed the instant application. Comments were filed with the Commission on August 6, 2003 and reply comments were filed on August 29, 2003. The Department of Justice filed an evaluation on August 26, 2003, expressing concerns about SBC's wholesale billing, manual handling of orders, line splitting, pricing, and data reliability.[28] According to the Department of Justice, billing accuracy problems continue to persist that were noted in the Michigan proceeding.[29] Regarding manual handling of orders, the Department of Justice notes that, because of software problems, competitive LECs often must rely on manual processes instead of SBC's normal mechanized interfaces to handle orders. It questions the adequacy of SBC's pre-release testing and defect resolution processes.[30] Moreover, the Department of Justice still questions, as it did in the Michigan proceeding, whether SBC's current processes provide nondiscriminatory access to line splitting and UNE-platform services.[31] The Department of Justice also questions whether SBC may be implementing state commission-ordered TELRIC rates in a way that violates our rules and the Act.[32] Finally, the Department of Justice notes that "the Commission should ensure that the current performance metrics are reliable, and that a stable and reliable reporting system will be in place to help ensure that these

[24] *Petition of Wisconsin Bell, Inc. for a Section 271 Checklist Proceeding*, 6720-TI-170, Notice of Proceeding and Investigation and Assessment of Costs and Technical Hearing (Wisconsin Commission September 14, 2001).

[25] SBC Application at 11-12; SBC Application App. A, Vol. 11, Tab 40, Affidavit of Scott T. Vandersanden (SBC Vandersanden Aff.) at paras. 13-23.

[26] *Petition of Wisconsin Bell, Inc. for a Section 271 Checklist Proceeding*, 6720-TI-170, Determination Phase I (Wisconsin Commission July 1, 2003) (***Wisconsin Commission Phase I Order***).

[27] *Petition of Wisconsin Bell, Inc. for a Section 271 Checklist Proceeding*, 6720-TI-170, Determination Phase II (Wisconsin Commission July 7, 2003) (***Wisconsin Commission Phase II Order***).

[28] Department of Justice Evaluation at 2.

[29] *Id.* at 9.

[30] *Id.* at 15-16.

[31] *Id.* at 16.

[32] *Id.* at 17.

local markets remain open after SBC's application is ultimately granted."[33] As a result, the Department of Justice states that it "is not in a position to support this application based on the current record," but states that the Commission may "be able to satisfy itself regarding these [issues] prior to the conclusion of its review."[34]

A. Compliance With Unbundling Rules

10. One part of the required showing, as explained in more detail below, is that the applicant satisfies the Commission's rules governing UNEs.[35] In the *UNE Remand* and *Line Sharing Orders*, the Commission established a list of UNEs that incumbent LECs were obliged to provide: (1) local loops and subloops; (2) network interface devices; (3) switching capability; (4) interoffice transmission facilities; (5) signaling networks and call-related databases; (6) OSS; and (7) the high frequency portion of the loop.[36] The D.C. Circuit vacated these orders and instructed the Commission to reevaluate the network elements subject to the unbundling requirement.[37] The court's mandate was stayed first until January 3, 2003, and then until February 20, 2003. On February 20, 2003, we adopted new unbundling rules as part of our *Triennial Review* proceeding, which became effective on October 2, 2003.[38]

11. Although the former unbundling rules were not in force at the time SBC filed its application in this proceeding, SBC states that it continues to provide nondiscriminatory access

[33] *Id.* at 19.

[34] *Id.* at 20.

[35] In order to comply with the requirements or checklist item 2, a BOC must show that it is offering "[n]ondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3)." 47 U.S.C. § 271(c)(2)(B)(ii).

[36] *See* 47 C.F.R. § 51.319; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*); *Deployment of Wireline Services Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

[37] *See United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *cert. denied sub nom. WorldCom, Inc. v United States Telecom Ass'n*, 123 S.Ct. 1571 (2003 Mem.).

[38] *See FCC Adopts New Rules For Network Unbundling Obligations Of Incumbent Local Phone Carriers*, News Release (rel. Feb. 20, 2003) (announcing adoption of an Order on Remand and Further Notice of Proposed Rulemaking in CC Docket No. 01-338, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*) (*Triennial Review News Release*); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003) (*Triennial Review Order*); *Effective Date for New Rules and Comment and Reply Comment Dates*, Public Notice, DA 03-2778 (WCB rel. Sept. 2, 2003) (*Triennial Review Public Notice*).

to these network elements.[39] As the Commission found in the *Bell Atlantic New York Order*, we believe that using the network elements identified in the former unbundling rules as a standard in evaluating SBC's application, filed during the interim period between the time the rules were vacated by the D.C. Circuit and the effective date of the new rules, is a reasonable way to ensure that the application complies with the checklist requirements.[40] We find it significant that no commenter disputes that SBC should be required to demonstrate that it provides these network elements in a nondiscriminatory way. Accordingly, for the purposes of this application, we will evaluate whether SBC provides nondiscriminatory access to the network elements identified under the former unbundling rules. We emphasize that, on an ongoing basis, SBC must comply with all of the Commission's rules implementing the requirements of sections 251 and 252 upon the dates specified by those rules.[41]

III. COMPLIANCE WITH SECTION 271(C)(1)(A)

12. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).[42] To meet the requirements of Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers."[43] The Act states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier."[44] The Commission has further held that a BOC must show that at least one "competing

[39] *See* SBC Application at 39, 42-43, 92-93, 95. Consistent with the *Bell Atlantic New York Order*, we will not require SBC to demonstrate compliance with rules that were not in effect at the time the application was filed. *See Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3967, para. 31 (1999) (*Bell Atlantic New York Order*), *aff'd*, *AT&T Corp v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

[40] *Bell Atlantic New York Order*, 15 FCC Rcd at 3966-67, para. 30. A similar procedural situation was presented in the *Bell Atlantic New York* proceeding. Bell Atlantic filed its application for section 271 authorization in New York after the unbundling rules had been vacated but before the *UNE Remand Order* had taken effect and, thus, at a time when no binding unbundling rules were in effect. Bell Atlantic suggested, and the Commission agreed, that it would be reasonable for the Commission to use the original seven network elements identified in the former unbundling rules in evaluating compliance with checklist item 2 for the application. *See id.* at 3966-67, paras. 29-31.

[41] *See SWBT Texas Order*, 15 FCC Rcd at 18368, para. 29; *Bell Atlantic New York Order*, 15 FCC Rcd at 3967, para. 31.

[42] 47 U.S.C. § 271(d)(3)(A).

[43] 47 U.S.C. § 271(c)(1)(A).

[44] *Id.*

provider" constitutes "an actual commercial alternative to the BOC,"[45] which a BOC can do by demonstrating that the provider serves "more than a *de minimis* number" of subscribers.[46]

13. We conclude that SBC satisfies the requirements of Track A in Illinois, Indiana, Ohio and Wisconsin. No party challenges SBC's compliance with section 271(c)(1)(A) for any of the four states in the instant application. The Illinois Commission concluded that SBC satisfies Track A for Illinois[47] and reports a growing competitive LEC market share in Illinois and expects this competitive LEC market share to increase in the future.[48] The Indiana Commission concluded that SBC satisfies Track A for Indiana while expressing some legal concerns.[49] The Ohio Commission concluded that SBC satisfies Track A requirements in Ohio[50] and the Wisconsin Commission concluded that SBC satisfies Track A for Wisconsin.[51]

14. In Illinois, SBC relies on interconnection agreements with AT&T, Focal Communications, McLeodUSA and MCI.[52] Specifically, the record demonstrates that AT&T, Focal Communications, McLeodUSA and MCI each provides service to more than a *de minimis* number of residential and business customers over their own facilities, or through the use of UNEs.[53] Each of these carriers represents an "actual facilities-based competitive alternative" to

[45] *Application by Qwest Communications International Inc., for Authorization To Provide In-Region, InterLATA Services in Minnesota*, WC Docket No. 03-90, Memorandum Opinion and Order, 18 FCC Rcd 13323, 13355, para. 60 (2003) (*Qwest Minnesota Order*); *Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Oklahoma*, CC Docket No. 97-121, Memorandum Opinion and Order, 12 FCC Rcd 8685, 8695, para. 14 (1997) (*SWBT Oklahoma Order*).

[46] *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6357, para. 42; *see also Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20585, para. 78 (1997) (*Ameritech Michigan Order*).

[47] Illinois Commission Comments at 25.

[48] *Annual Report on Telecommunications Markets in Illinois*, Illinois Commerce Commission, May 28, 2003. SBC Heritage Illinois Aff., Attach. I at 34-5. The Illinois Commission reports a total of 45 competitive LECs constitute approximately 19.5% of Illinois retail POTS service as of year-end 2002. *Id.* at 12.

[49] Indiana Commission Comments at 3-4. Referring to certain pending court challenges in Indiana, the Indiana Commission modified its determination that SBC satisfied Track A requirements "to the extent the FCC determines that the uncertainty caused by SBC's challenges to our legal authority to order it to file a UNE tariff does not constitute or cause a lack of 'concrete and specific obligation [by SBC] to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item.'" Such legal challenges are addressed in the Pricing section. See para. 49 *infra*.

[50] Ohio Commission Comments, Attach. at 23.

[51] Wisconsin Commission Comments at 1; SBC Application, App. C-WI, Vol. 12, Tab 66 at 21-22.

[52] SBC Heritage Illinois Aff. at para. 5-13.

[53] SBC Heritage Illinois Aff., Attach. E (citing confidential portion). SBC estimates that competitive LECs provide between 29% and 30% of total access lines in Illinois. *Id.* at para. 4.

SBC in Illinois.

15. In Indiana, SBC relies on interconnection agreements with AT&T, Choice One Communications, McLeodUSA, SIGECOM LLC, and MCI.[54] Specifically, the record demonstrates that AT&T, Choice One Communications, McLeodUSA, SIGECOM LLC, and MCI each provides service to more than a *de minimis* number of residential and business customers over their own facilities, or through the use of UNEs.[55] Each of these carriers represents an "actual facilities-based competitive alternative" to SBC in Indiana.

16. In Ohio, SBC relies on interconnection agreements with AT&T, Choice One Communications, CoreComm, and MCI.[56] Specifically, the record demonstrates that AT&T, Choice One Communications, CoreComm, and MCI each provides service to more than a *de minimis* number of residential and business customers over their own facilities, or through the use of UNEs.[57] Each of these carriers represents an "actual facilities-based competitive alternative" to SBC in Ohio.

17. In Wisconsin, SBC relies on interconnection agreements with AT&T, Choice One Communications, McLeodUSA, TDS Metrocom, and MCI.[58] Specifically, the record demonstrates that AT&T, Choice One Communications, McLeodUSA, TDS Metrocom, and MCI each provides service to more than a *de minimis* number of residential and business customers over their own facilities, or through the use of UNEs.[59] Each of these carriers represents an "actual facilities-based competitive alternative" to SBC in Wisconsin.

IV. PRIMARY ISSUES IN DISPUTE

18. As in recent section 271 orders, we will not repeat here the analytical framework and particular legal showing required to establish compliance with every checklist item. Rather, we rely upon the legal and analytical precedent established in prior section 271 orders,[60] and we

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[54] SBC Heritage Indiana Aff. at para. 5-15.

[55] SBC Heritage Indiana Aff., Attach. E (citing confidential portion). SBC estimates competitive LECs provide between 15% and 21% of access lines in Indiana. *Id.* at para. 4.

[56] SBC Heritage Ohio Aff. at para. 5-14.

[57] SBC Heritage Ohio Aff., Attach. E (citing confidential portion). SBC estimates that competitive LECs provide between 20 % and 29% of local services access lines in Ohio. *Id.* at para. 4.

[58] SBC Heritage Wisconsin Aff. at para. 5-14.

[59] *Id.*, Attach. E (citing confidential portion). SBC estimates that competitive LEC market share is approximately 25% as of May 2003. *Id.* at para. 2.

[60] *Application by SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Michigan*, WC Docket No. 03-138, FCC 03-228, Memorandum Opinion and Order (rel. Sept. 17, 2003) (*SBC Michigan II Order*); *Qwest Minnesota Order*, 18 FCC Rcd at 13328, para. 10; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6241-42, (continued....)

attach comprehensive appendices containing performance data and the statutory framework for approving section 271 applications.[61] Our conclusions in this Order are based on performance data as reported in carrier-to-carrier reports reflecting service in the period from March 2003 through July 2003.

19. We focus here on the issues in controversy in the record. Accordingly, we begin by addressing SBC's compliance with checklist item one, which analyzes SBC's provision of interconnection at just, reasonable and nondiscriminatory prices, and checklist item two, which addresses both the accuracy and reliability of SBC's performance data and access to unbundled network elements at just, reasonable and nondiscriminatory terms and prices. We also extensively address issues regarding checklist item four, which evaluates access to unbundled local loops. Next, we address the following checklist items: checklist item seven (911 and E911 services), checklist item ten (signaling) and checklist item thirteen (reciprocal compensation). The remaining checklist requirements are discussed briefly, as they received little or no attention from commenting parties, and our own review of the record leads us to conclude that SBC has satisfied these requirements. Finally, we discuss section 272 and the public interest requirements, which include issues regarding SBC's performance remedy plans in the four states.

A. Checklist Item 1 – Interconnection

20. Checklist item one requires a BOC to provide "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."[62] Section 251(c)(2) requires incumbent LECs to provide interconnection "at any technically feasible point within the carrier's network . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[63] Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit.[64]

21. Based upon the evidence in the record, we find that SBC offers interconnection in Illinois, Indiana, Ohio and Wisconsin to other telecommunications carriers at just, reasonable, and nondiscriminatory rates in compliance with checklist item one.

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paras. 7-10; *SWBT Texas Order*, 15 FCC Rcd at 18359-61, paras. 8-11; *Bell Atlantic New York Order*, 15 FCC Rcd at 3961-63, paras. 17-20; *see also* App. F (Statutory Requirements).

[61] *See generally* Appendices B (Illinois Performance Data), C (Indiana Performance Data), D (Ohio Performance Data), E (Wisconsin Performance Data), and F (Statutory Requirements).

[62] 47 U.S.C. § 252(c)(2)(B)(i).

[63] *Id.* § 251(c)(2).

[64] *Id.* § 252(d)(1).

22. *Background.* Commenters contend that in Indiana and Ohio,[65] SBC improperly charges for the number of amps fused, rather than the number of amps actually requested and used by competitive LECs.[66] AT&T argues that SBC's power collocation charges are based wrongfully on the full amount of potential (fused and non-fused) power that can be delivered.[67] AT&T argues that SBC's method of billing for power results in overcharging and bears no relation to the actual power provided to competitive LECs or to the costs incurred by SBC in providing power.[68] Although AT&T does not contest the underlying state-approved power consumption rates charged by SBC, AT&T argues that SBC's power collocation pricing structure and billing practices violate TELRIC's cost causation requirements.[69] While AT&T's analysis of SBC's collocation power charges is limited to Ohio, where AT&T and other competitive LECs raised this issue before the Ohio Commission during the section 271 proceeding, AT&T asserts that SBC's collocation power charges are in violation of TELRIC principles in Indiana as well.[70]

23. NuVox maintains that SBC's assessment of collocation power recurring charges in Indiana and Ohio violate the interconnection agreement between the two companies.[71] NuVox argues that SBC charges NuVox for the total amount of fused power that could be delivered over all feeds, regardless of whether NuVox uses this much power.[72] NuVox explains that collocators order dual feeds, a primary "A" feed and a secondary "B" feed, to provide redundancy for the continuous flow of power to the collocation arrangement should one feed fail.[73] Both feeds must be capable of carrying the entire amount of power required to operate the collocation

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[65] No party raises this issue with respect to Illinois, where the Illinois Commission has required SBC to meter power usage. We discuss commenters' claims regarding Wisconsin below.

[66] *See* AT&T Comments at 49-51; AT&T Reply at 44-46; NuVox Comments at 3-4. SBC's charges for power in Illinois are not being contested. *See* NuVox Comments at 3 n.6 (explaining that the Illinois Commission requires SBC to bill for power on a usage basis).

[67] AT&T Comments at 49-51.

[68] AT&T Comments at 49-50; AT&T Reply at 44-45.

[69] AT&T Reply at 44. AT&T, in its comments, focused primarily on SBC's recurring power charges for collocation spaces in Ohio, where AT&T raised this issue before the Ohio Commission. *See* AT&T Comments at 49.

[70] AT&T Comments at 49. *See generally*, AT&T Comments, Declaration of Danial Noorani (setting out AT&T's more detailed argument against SBC's recurring collocation power charges in Ohio and analogizing SBC's policy to that of a residential power company charging a residential customer for the amount of power the customer would draw if the customer ran every appliance in the home 24 hours a day and then doubling that amount to account for backup power).

[71] NuVox Comments at 2-3. NuVox does not challenge the state commission-approved collocation power recurring rates, but rather SBC's application of the charges. NuVox Comments at 4.

[72] NuVox Comments at 4-8.

[73] NuVox Comments at 4.

arrangement, i.e., each feed must be fused at a higher number of amps than it would normally carry if both feeds were functional. NuVox alleges that SBC wrongfully assesses monthly recurring power consumption charges for the total number of fused amps capable of being carried on both the primary and secondary feeds.[74] NuVox also claims that SBC wrongfully assesses monthly recurring power consumption charges for the total potential amount of fused capacity of feeds that are installed for future growth but which presently are not fused and over which no power currently flows.[75] NuVox asserts, as an example of the wrongful charging, at one collocation arrangement it is charged by SBC on a monthly basis for the consumption of a total 600 amps of fused power at a cost of approximately $3,600 per month, even though NuVox's actual peak usage is on average in the 5 to 15 amp range per such collocation arrangement, with the highest power demand for any single collocation at 21 amps.[76] NuVox argues that SBC has no justification for applying a monthly recurring power consumption charge to more than 50 percent of the sum of the fused amps, and that there should be no recurring charge at all for power leads that are not fused.[77] NuVox asserts that SBC effectively is unilaterally amending the terms and conditions of the interconnection agreement, and billing procedures agreed upon by the parties in their interconnection agreements between the parties in Indiana and Ohio, and SBC therefore fails to provide interconnection to NuVox on a just, reasonable and nondiscriminatory basis, in accordance with the agreement between the companies.[78] NuVox currently is engaged in dispute resolution discussions with SBC before both the Indiana and Ohio Commissions regarding SBC's charges for collocation power.[79]

24. SBC states that it charges competitive LEC collocators on a recurring monthly basis for power based on capacity ordered rather than for power actually consumed, even though competitive LECs may ultimately use less than the full amperage ordered.[80] SBC justifies this

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[74] NuVox Comments at 4-6.

[75] NuVox Comments at 4-6.

[76] NuVox Comments at 6.

[77] *See* NuVox Comments at 11-13 (setting out NuVox's claim that it is limited to using 50 percent of the fused capacity of individual power feeds); Letter from Ross A. Buntrock, Legal Counsel for NuVox, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-167, Attach. Koker Testimony at 16 (filed Aug. 29, 2003) (NuVox August 29 *Ex Parte* Letter) (wherein a NuVox vice president specifically recommends, as an alternative fair price, that the SBC power consumption charge be applied to 50 percent of the total fused amps); Letter from Ross A. Buntrock, Legal Counsel for NuVox, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-167 at 2-6 (filed Sept. 23, 2003) (NuVox September 23 *Ex Parte* Letter) (providing additional analysis as to industry practices regarding the purposes of redundant power leads and an explanation as to why there is a 50 percent limitation on the maximum load of total amps associated with dual power leads, and arguing the lack of justification for recurring charges being applied against non-fused leads).

[78] NuVox Comments at 9.

[79] *Id.* at 6. AT&T has petitioned to intervene in both the Ohio and Indiana proceedings.

[80] SBC Reply at 45. *See generally* SBC Application Reply App., Vol. 1a, Tab 1, Reply Affidavit of Scott Alexander (SBC Alexander Reply Aff.) at paras. 1-37.

practice by arguing that it must recover costs associated with sizing and maintaining its DC power plant at the level necessary to provide the total power capacity (fused and non-fused) competitive LECs have ordered.[81] SBC argues that its monthly recurring power charge is intended to recover collocators' proportional cost of the DC power plant and AC power requirements, along with associated heating, ventilation and air conditioning charges.[82] SBC also states, however, that the cost studies underlying the rates at issue do not include costs associated with the power plant (for rectifiers, batteries, and back-up generation).[83] SBC argues that, if it were unable to provide the full power capacity ordered by a collocator upon demand, it would be subject to potential claims of breach of the obligations it must meet pursuant to its interconnection agreements and/or tariffs.[84] SBC maintains that the delivery of power from a DC power plant is not analogous to a commercial AC power delivery system that services residential customers. SBC argues that a DC power delivery system does not have the advantage of projecting rates based on historical and industry capacity data as do AC power utility systems. Instead, SBC asserts that a DC power system must be designed to provide the load requirements specifically set out in the collocation orders arranged with SBC.[85] SBC also argues that to permit competitive LECs to order as much power as they wish but pay only for power consumed could result in SBC incurring power plant expenses that could not be recovered unless rates and underlying rate cost studies are revised to address such changes.[86] Ultimately, SBC argues that the dispute between it and the competitive LECs is fact-intensive and not properly before the Commission because this is a matter of intercarrier disputes regarding billing that are pending before both the Indiana and Ohio Commissions.[87]

25. During the pendency of this section 271 application, SBC has made available to

[81] SBC Alexander Reply Aff. at para. 10; *see also* at paras. 34-37 (regarding SBC billing for non-fused power lines).

[82] SBC Alexander Reply Aff. at para. 20.

[83] SBC Alexander Reply Aff. at para. 22.

[84] SBC Alexander Reply Aff. at para. 10.

[85] SBC Alexander Reply Aff. at paras. 11-12.

[86] SBC Alexander Reply Aff. at paras. 11-12.

[87] SBC Reply at 46 (citing *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania,* CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17478, para. 108 (2001) (*Verizon Pennsylvania Order*), and *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts,* CC Docket No. 01-9, Memorandum Opinion and Order, 17 FCC Rcd 8988, 9100-9102, paras. 200-203 (2001) (*Verizon Massachusetts Order*). SBC notes that the Ohio Commission has confirmed the validity of SBC's collocation power billing practice. *See* Ohio Commission Comments at 48 (wherein the Ohio Commission notes its reaffirmation of a two-rate element for power including a nonrecurring charge for power delivery per power lead and a recurring charge for power consumption per fuse amp).

competitive LECs in Indiana and Ohio revised collocation power recurring rates pursuant to an Accessible Letter offering an interconnection agreement amendment.[88] Specifically, if a competitive LEC in Indiana or Ohio warrants that it will not draw more than 50 percent of the combined ordered capacity of the leads that are fused for a collocation arrangement, SBC will bill the competitive LEC for DC collocation power at a monthly recurring rate of $9.68 applied to 50 percent of the ordered amps.[89] This rate is based on the recurring power rate in Michigan, reduced to account for certain charges that are recovered through non-recurring charges (NRCs) in Indiana and Ohio.[90] SBC also notified competitive LECs that, as of April 1, 2003, SBC has applied an engineering policy of fusing competitive LEC DC power feeds at 125 percent of the capacity requested by the competitive LEC.[91]

26. *Complete-As-Filed Waiver.* We waive the complete-as-filed requirement on our own motion pursuant to section 1.3 of the Commission's rules to the limited extent necessary to consider SBC's revised collocation power rates and practices.[92] The Commission maintains certain procedural requirements governing section 271 applications.[93] In particular, the "complete-as-filed" requirement provides that when an applicant files new information after the comment date, the Commission reserves the right to start the 90-day review period again or to accord such information no weight in determining section 271 compliance.[94] We maintain this requirement to afford interested parties a fair opportunity to comment on the BOC's application, to ensure that the Attorney General and the state commission can fulfill their statutory consultative roles, and to afford the Commission adequate time to evaluate the record.[95] The Commission can waive its procedural rules, however, "if special circumstances warrant a

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[88] Letter from Geoffrey M. Klineberg, Legal Counsel for SBC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-167 (Sept. 29, 2003) (SBC Sept. 29 *Ex Parte* Letter).

[89] SBC Sept. 29 *Ex Parte* Letter at 1.

[90] SBC Sept. 29 *Ex Parte* Letter at 1.

[91] SBC Sept. 29 *Ex Parte* Letter at 2, Attach. B.

[92] 47 C.F.R. § 1.3.

[93] *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, 16 FCC Rcd 6923 (Com. Car. Bur. 2001) (*Updated 271 Filing Requirements Public Notice*).

[94] *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island*, CC Docket No. 01-324, Memorandum Opinion and Order, 17 FCC Rcd 3300, 3306-06, para. 7 (2002) (*Verizon Rhode Island Order*); *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6247, para. 21.

[95] *Verizon Rhode Island Order*, 17 FCC Rcd at 3306, para. 7; *Ameritech Michigan Order*, 12 FCC Rcd at 20572-73, paras. 52-54.

deviation from the general rule and such deviation will serve the public interest."[96]

27. We find that a waiver is appropriate in these circumstances. SBC's offering of revised collocation power recurring charges and a revised method of applying those charges constitutes a change in its rates subsequent to the filing of its application.[97] In prior cases the Commission has found cause to grant a waiver of the complete-as-filed rule where the rate changes are responsive to criticisms on the record, as compared to new information that "consists of additional arguments or information" concerning current pricing.[98] The revisions made by SBC in this case satisfy this standard. The changes were responsive to arguments raised in the record of this proceeding, and the revisions provide a pro-competitive response to commenters' stated concerns.[99] The newly-available collocation power recurring charge is based on the rate approved by the Michigan Commission, which in turn was derived from AT&T's cost model.[100] SBC has agreed to apply the rate in a manner consistent with commenters' suggestions in this proceeding, i.e., to 50 percent of the combined ordered capacity of the leads that are fused for a collocation arrangement.[101] We find that it is fully consistent with our precedent under section 271 to consider the type of responsive information without requiring the BOC to make a new filing.

28. Another major concern that we have identified in prior cases where rates have changed during a proceeding is that interested parties be afforded a sufficient opportunity to review the new rates, and that the analytical burden of doing so is not too great in light of the time constraints inherent in the section 271 application process.[102] Although SBC did not provide notice of this rate change until day 74 of the 90-day statutory period, in prior cases we have

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[96] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969). *See also* 47 U.S.C. § 154(j); 47 C.F.R. § 1.3.

[97] *See* SBC Sept. 29 *Ex Parte* Letter at 1-2 (describing the Accessible Letters sent to competitive LECs information them of SBC's offer to make available revised collocation power rates and its policy of fusing feeds at 125 percent of the ordered capacity).

[98] *Verizon Rhode Island Order* 17 FCC Rcd at 3308-09, para. 12; *Application by Qwest Communications International, Inc. for Authorization to Provided In-Region, Inter-LATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, WC Docket No. 02-314, Memorandum Opinion and Order, 17 FCC Rcd 26303, 26409-10, para. 180 (2002) (*Qwest Nine State Order*).

[99] *See* AT&T Comments at 49-51; NuVox Comments at 4-14.

[100] *See* Letter from Geoffrey M. Klineberg, Counsel for SBC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-167, Attach. E Ex. 4 (confidential) (filed Sept. 22, 2003) (SBC Sept. 22 *Ex Parte* Letter).

[101] *See* NuVox Comments at 11-13 (arguing that SBC engineers its DC power distribution systems on the expectation that collocators will limit the power demand to 50 percent of the capacity of each feed in a dual feed pair).

[102] *Verizon Rhode Island Order*, 17 FCC Rcd at 3308, paras. 10-11.

considered rate reductions made later in the 90-day application cycle.[103] We also find no undue burden associated with analyzing the new rates. Parties were given notice of this filing and an opportunity to comment on it.[104] Additionally, the new offering is not based on a novel cost theory, as aspects of it are consistent with principles commenters argued should be applied to the rates at issue. Therefore, we find it appropriate to waive the complete-as-filed rule in this instance and consider SBC's revised collocation power submissions.

29. *Discussion.* Commenters in this proceeding argue that SBC's collocation power rates in Indiana and Ohio were developed on a consumption basis (i.e., the cost study underlying the rates was based on the costs incurred per amp consumed), but SBC improperly is applying the rates on a capacity basis (i.e., the rates are applied to the total potential power that could be drawn over all feeds). To comply with the just, reasonable and nondiscriminatory requirements of checklist item one, an applicant must apply its rates consistent with the manner in which the rates were developed. We note that the commenters have raised legitimate questions with respect to SBC's prior application of its collocation power recurring rates; however, we need not decide these issues in light of the revised collocation power rates and terms filed by SBC in its two Accessible Letters.

30. SBC provided notice to the competitive LECs in Indiana and Ohio through two Accessible Letters that a revised recurring collocation power rate and a 125 percent fusing factor are available.[105] The revised rate is based on the Michigan recurring collocation power rate, reduced to account for costs that are recovered through NRCs in Indiana and Ohio.[106] Although the rate of $9.68 is nominally higher than the current rates in Indiana ($6.09) and Ohio ($6.76),[107] SBC will apply the $9.68 rate on 50 percent of the combined ordered capacity of the leads that are fused for a collocation arrangement. Therefore, collocators that opt to amend their interconnection agreements to take this rate will not be assessed recurring charges for backup power or ordered feeds that are not fused. In addition, SBC has clarified that it now provides a fusing factor of 125 percent above the capacity requested by a competitive LEC.[108] This allows competitive LECs ordering power on or after April 1, 2003 to reduce the amount of power

[103] *See, e.g., Verizon Rhode Island Order*, 17 FCC Rcd at 3306-10, paras. 8-17 (considering changes in rates filed on day 80 of the application).

[104] *Comments Requested in Connection with SBC's Pending Section 271 Applications*, Public Notice, DA 03-3003 (WCB rel. Sept. 30, 2003).

[105] SBC Sept. 29 *Ex Parte* Letter.

[106] SBC Sept. 29 *Ex Parte* Letter at 1.

[107] *See* SBC Sept. 22 *Ex Parte* Letter at Attach. E, Ex. 1 at 1, and Ex. 2 at 1. SBC asserts that the $6.09 rate in Indiana is found in the NuVox interconnection agreement.

[108] SBC Sept. 29 *Ex Parte* Letter at Attach. B.

requested by 20 percent.[109] Additionally, parties that ordered power under SBC's prior practice of requiring competitive LECs to order power at the fused level are able to revise these ordered amps to account for this fusing factor.[110] In response to SBC's filing of the Accessible Letters, NuVox states that it is in the process of resolving its collocation power billing disputes with SBC and NuVox withdraws its oppositions to SBC's section 271 applications in Indiana and Ohio.[111]

31. AT&T, Allegiance, and LDMI argue that the collocation power changes in SBC's Accessible Letters still do not demonstrate SBC's compliance with checklist item one. AT&T asserts that SBC has not demonstrated that its new Ohio recurring rates are TELRIC-compliant because use of the Michigan rate may cause double-recovery of some costs.[112] SBC explained, however, that it had reduced the Michigan recurring rate to be applied in Ohio to account for costs that are recovered in non-recurring charges in Ohio.[113] AT&T also argues that, under its prior power charging practice, SBC required collocators using 40 amps of power to order 100 fused amp feeds.[114] AT&T questions whether SBC will impose unreasonable NRCs for removing power cables if collocators attempt to reduce their power capacity from 100 fused amps to a smaller amperage pursuant to SBC's new collocation power policies.[115] SBC responds that it did not require collocators to order 100 fused amp feeds to power 40 amps of equipment, and, in fact, notes that AT&T does not have any 100 fused amp feeds in Ohio or Indiana but

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[109] For example, if a collocator requires 40 amps of power for its equipment in a collocation arrangement, it would have ordered two feeds fused at 50 amps each to allow for power surges and redundancy. Under the prior rate structure, SBC would have assessed the recurring charge on 100 amps for the collocation arrangement. Pursuant to the interconnection agreement amendments in the Accessible Letters, a collocator can now order two feeds fused at 40 amps, and SBC will automatically fuse the feeds at 50 amps. SBC will bill the collocator for a total of 40 amps (50 percent of the combined ordered capacity of the leads that are fused). Twenty percent of the reduction (from 100 amps to 80 amps) is attributable to the 125 percent fusing factor.

[110] Letter from Geoffrey M. Klineberg, Legal Counsel for SBC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-167 (Oct. 1, 2003) (SBC Oct. 1 *Ex Parte* Letter).

[111] NuVox Supplemental Comments at 2.

[112] AT&T Supplemental Comments at 1-2.

[113] SBC Sept. 29 *Ex Parte* Letter at 1.

[114] AT&T Supplemental Comments at 3 and n.2. AT&T asserts that, prior to April 1, 2003, SBC required collocators to fuse at 150 percent of their required amps, therefore a collocator using 40 amps of power would need to fuse the feed at 60 amps. AT&T Supplemental Comments at 3 n.2. According to AT&T, however, SBC offered fuse sizes of only 20 amps, 50 amps, and 100 amps, so a collocator using 40 amps fused at 150 percent was forced to order a feed fused at 100 amps. AT&T Supplemental Comments at 3 n.2.

[115] AT&T Supplemental Comments at 3-4. *See also* Letter from Harisha J. Bastiampillai, Legal Counsel for LDMI, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-167 (Oct. 8, 2003) (expressing concern about potential NRCs for modifying collocation arrangements in response to SBC's revised collocation power practices).

primarily has 60 fused amp feeds.[116] SBC explains that, while it may be necessary to remove cabling when reducing power from a 100 fused amp feed to a feed fused at a smaller amount,[117] thereby incurring sizeable NRCs, reducing from a 60 fused amp feed to a 50 fused amp feed would not likely require removal of cable.[118] Therefore, it is unlikely that AT&T's power reductions will require cable removal in Indiana and Ohio. Allegiance and LDMI complain that the recurring charge has gone from $6.76 to $9.68 per amp, but they do not allege that the $9.68 Michigan-based rate is not TELRIC-compliant, nor do they refute SBC's claim that the $6.76 Ohio rate did not take into account certain costs that SBC incurs in providing DC power.[119]

32. We find that the availability of the terms referenced in the Accessible Letters filed in this proceeding by SBC on September 29, 2003 demonstrate that SBC provides collocation on a just, reasonable, and nondiscriminatory basis in compliance with checklist item one in Indiana and Ohio. Furthermore, we note that the issue of SBC's prior practice of applying its rate to 100 percent of the fused capacity of the feeds is currently before both the Indiana and Ohio Commissions.[120] We believe the state commissions will adequately examine this issue in the pending proceedings.

33. AT&T and TDS Metrocom argue that SBC's collocation power pricing is also an issue in Wisconsin.[121] It appears, however, that SBC's rate for collocation power in Wisconsin was stipulated to in a settlement agreement as TELRIC-compliant by AT&T and other competitive LECs.[122] Given that commenters do not contest the rate, our concern is whether the

[116] Letter from Geoffrey M. Klineberg, Legal Counsel for SBC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-167 at 2 (Oct. 9, 2003) (SBC Oct. 9 *Ex Parte* Letter). SBC states that it did not require collocators to fuse their feeds at 150 percent. SBC Oct. 9 *Ex Parte* Letter at 2. Furthermore, SBC asserts that, although the standard fused feeds listed in its tariffs and collocation applications are 20 amps, 50 amps, and 100 amps, collocators have always had the option to order feeds fused at other sizes. SBC Oct. 9 *Ex Parte* Letter at 2.

[117] This is because, depending on the cabling in each individual central office, 100 fused amp feeds generally go to different places in the central office than do feeds fused for smaller amounts due to safety and fire hazard concerns. SBC Oct. 9 *Ex Parte* Letter at 2 n.3.

[118] SBC Oct. 9 *Ex Parte* Letter at 2.

[119] Allegiance/LDMI Supplemental Comments at 2. LDMI also argues that SBC should offer the Accessible Letters' collocation power pricing options in Michigan. LDMI Supplemental Comments at 1-2. This proceeding deals with SBC's section 271 application for Illinois, Indiana, Ohio, and Wisconsin, therefore this is not the proper venue for LDMI to raise a complaint regarding SBC's collocation power practices in Michigan.

[120] Complaint of NuVox Communications of Indiana, Inc. Against SBC Indiana Regarding Its Unlawful Billing Practices for Collocation Power Charges, Cause No. 42398 (filed with Indiana Commission Mar. 25, 2003); Complaint of NuVox Communications of Ohio, Inc. v. SBC Ohio, Case No. 03-802-TP-CSS (filed with Ohio Commission Mar. 24, 2003).

[121] *See* AT&T Comments at 49; AT&T Reply at 46; TDS Metrocom Supplemental Comments at 2-3.

[122] *See* SBC Reply at 48; TDS Metrocom Supplemental Comments at 2.

application of the rate is consistent with the underlying rate development methodology. In light of the fact that this rate is a stipulated rate, we have no information about the rate development in Wisconsin. To the extent the parties dispute SBC's billing practices in Wisconsin or the stipulated rate, the Wisconsin Commission is the proper forum to initiate a resolution of such questions, and this issue is pending before the Wisconsin Commission.[123]

B. Checklist Item 2—Unbundled Network Elements

1. Pricing of Unbundled Network Elements

34. Checklist item two of section 271 states that a BOC must provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act.[124] Section 251(c)(3) requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[125] Section 252(d)(1) provides that a state commission's determination of the just and reasonable rates for network elements must be nondiscriminatory, must be based on the cost of providing the network elements, and may include a reasonable profit.[126] Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the total element long-run incremental cost (TELRIC) of providing those elements.[127]

35. In applying the Commission's TELRIC pricing principles in this application, we do not conduct a *de novo* review of a state's pricing determinations.[128] We will, however, reject an application if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that

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[123] TDS Metrocom Supplemental Comments at 3, Attach.

[124] 47 U.S.C. § 271(c)(2)(B)(ii).

[125] 47 U.S.C. § 251(c)(3).

[126] 47 U.S.C. § 252(d)(1).

[127] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-47, paras. 674-79 (1996) (*Local Competition First Report and Order*) (subsequent history omitted); 47 C.F.R. §§ 51.501-51.515. Last year the Supreme Court upheld the Commission's forward-looking cost methodology in determining the rates for UNEs. *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 523 (2002). The Commission recently has initiated a proceeding to review its TELRIC rules. *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-173, FCC 03-224 (Sept. 15, 2003).

[128] *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55 (citations omitted). *See also Sprint v. FCC*, 274 F.3d at 556 ("When the Commission adjudicates § 271 applications, it does not – and cannot – conduct *de novo* review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles.").